Appeal 282-73 Judge Davis.
1870

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 223.

WILLIAM SHUEY, EXECUTOR OF HENRY B. STE. MARIE, DECEASED, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED AUGUST 14, 1874.

Stacy Grant

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1 United States Court of Claims.

HENRY B. STE. MARIE
v.
THE UNITED STATES. } No. 6415.

Original petition filed February 12, 1872.—*Amended petition filed & allowed by the court, May* 6, 1873.

To the honorable Court of Claims of the United States:

The petition of Henry B. Ste. Marie, residing in the city of Montreal, in the Dominion of Canada, respectfully showeth:

I. That your petitioner has never voluntarily or otherwise given aid or comfort to the rebellion, or the enemies of the United States, but on the contrary has always been friendly to the Government.

II. That on the twentieth day of April, A. D. 1865, soon after the assassination of Abraham Lincoln, President of the United States, Edwin *N.* Stanton, Secretary of War of the United States, issued and published the following proclamation, in the words, letters, and figures following, to wit:

$100,000 REWARD!

WAR DEPARTMENT,
Washington, April 20th, 1865.

* * * * * * *

$25,000 reward will be paid for the apprehension of John H.
2 Suratt, one of Booth's accomplices; liberal reward will be paid for any information that shall conduce to the arrest of either of the above-named criminals, or their accomplices.

EDWIN M. STANTON,
Secretary of War.

III. That at the time of the issuing and publication of the foregoing proclamation as aforesaid, your petitioner was residing as aforesaid in the city of Montreal, in the Dominion of Canada, a place notorious during the rebellion in the United States as the rendezvous of conspirators against the Government of the United States, yet, notwithstanding the great risk of his life your petitioner ran in seeking for the said John H. Suratt in the said city of Montreal, for the purpose of capturing him and delivering him to the authorities of the United States, agre'ably to the said proclamation, your petitioner did on the very day of the publication of the said proclamation at Montreal, aforesaid, to wit, on the twenty-first day of April, in the year aforesaid, foregoing all other business and occupations whatsoever, commence the pursuit of the said John H. Suratt, for the purpose of capturing and delivering him, the said John H. Suratt, to the authorities of the United States, or of causing the apprehension of the said John H. Suratt, agre'ably to the aforesaid proclamation, and your petitioner continued his aforesaid efforts for the apprehension of the said John H. Suratt until the twentieth day of June in the last said year.

IV. And your petitioner avers that he engaged in the aforesaid work and labor solely because of the promise of the United States, set forth in the said proclamation offering a reward of twenty-five thousand dollars for the apprehension of the said John H. Suratt, as specified in the said proclamation as hereinbefore set forth.

V. Your petitioner further avers, that on or about the twentieth day of June, in the year last aforesaid, he learned that the said John H. Suratt, who had theretofore been hidden and secreted in the said city of Montreal, had effected his escape from the last said city and had
3 started for Europe, whereupon your petitioner on the twenty-second day of June, in the year last aforesaid, also started for Europe in pursuit of the said John H. Suratt for the purpose aforesaid of capturing and arresting the said John H. Suratt, in order that the said John H. Suratt should be given over to the authorities of the United States and be brought within the limits of the United States for trial, agreeable to the said proclamation. That your petitioner crossed the Atlantic Ocean and arrived in the (then) empire of France, in Europe, on or about the latter part of the month of July, in the year last aforesaid, and that he took up his residence in the city of Paris, in the said empire of France, because he had received information that the said John H. Suratt was then living and residing in the said city of Paris; that he was at great expense in looking for and trying to discover the whereabouts of the said John H. Suratt, while your petitioner was in France; that in the month of September, in the year last aforesaid, and while your petitioner was residing in the city of Paris aforesaid, he received information that the said John H. Suratt was then in the kingdom of Italy, whereupon your petitioner departed from the empire of France and went into the kingdom of Italy, in pursuit of the said John H. Suratt. That your petitioner, at great trouble, hardship, and expense travelled through the said kingdom of Italy in pursuit of the said John H. Suratt, and that he expended large sums of money in traveling through the said kingdom of Italy in pursuit of the said John H. Suratt; that your petitioner at last, in the month of March in the year A. D. 1866, had information that not only was the said John H. Suratt there in the kingdom of Italy, but that the said John H. Suratt was then a soldier in the army of the Pope of Rome, whereupon, after looking through various companies of the soldiers of the army of the Pope of Rome to discover the said John H. Suratt, or at least to discover the regiment the said John H. Suratt was a soldier in, your petitioner on the ninth day of April, in the year last aforesaid, for the purpose of arresting, or effecting, or causing the arrest of the said John H. Suratt, enlisted as a
4 soldier for the term of two years in the army of the Pope of Rome. All of which was done and performed by your petitioner because of the promise of the United States set forth in the aforesaid proclamation.

VI. Your petitioner further avers that soon after he enlisted and became a soldier in the army of the Pope of Rome as aforesaid, to wit, in the month of April, A. D. 1866, he discovered and found the said John H. Suratt; that your petitioner then, in the month and year last aforesaid, without any delay, immediateiy communicated to the honorable Rufus King, United States minister at the court of the Pope of Rome, that he had discovered John H. Suratt, one of the alleged murderers of Abraham Lincoln, late President of the United States, and one of the alleged conspirators to assassinate the Hon. William H. Seward, late Secretary of State, and he then also requested the said Hon. Rufus King, minister of the United States as aforesaid, to have the said John H. Suratt arrested, so that the said John H. Suratt should be taken within the limits of the United States and be tried for the alleged crimes aforesaid; that the Hon. Rufus King, United States minister as aforesaid, took the matter of your petitioner's discovery of the said John H.

Suratt warmly in hand and communicated with your petitioner frequently on the subject of the discovery and arrest of the said John H. Suratt.

VII. Your petitioner further showeth that, from the date of his dis-'overy of said John H. Suratt in the month of April, 1866, as aforesaid, and until the arrest of said John H. Suratt in the month of December in the year last aforesaid, at the town of Veroli, in the said kingdom of Italy, your petitioner continued to act under the instructions of said Hon. Rufus King, in watching, keeping in view, and looking after the said John H. Suratt, so that he could not escape, pending negotiations for the arrest and delivering to the authorities of the United States of the said John H. Suratt, then being conducted and going on between the said kingdom of Italy and the United States of America.

5 That in the month and year last aforesaid, and pending the said negotiations between the said countries, a letter from said Hon. Rufus King on the subject of the said arrest and delivery of the said John H. Suratt, as aforesaid, being directed to your petitioner, was delivered to an Italian soldier named Santa Maria. The said Santa Maria thinking the said letter was intended for himself, and the said letter being in the English language, which said Santa Maria could not read, he took the said letter to the said John H. Surratt to be read, whereupon the said John H. Suratt discovered by said letter the efforts and negotiations aforesaid for his arrest and delivery to the authorities of the United States. The said John H. Suratt immediately after his reading of the said letter made preparations for escaping from the said kingdom of Italy, to avoid being arrested and delivered to the United States authorities. And your petitioner avers that the said John H. Suratt would have escaped at the time last aforesaid had he not been frustrated and prevented from so doing by your petitioner, who, finding out how the said letter had fallen into the hands of the said Suratt, as hereinbefore mentioned, immediately informed Hon. Rufus King of the matter. Then, in the month and year last aforesaid, at the special instance and request of your petitioner, the said John H. Suratt was arrested and confined in the guard-house at the town of Veroli, in the said kingdom of Italy.

And your petitioner avers that the said John H. Suratt was arrested as aforesaid and placed in said guard-house for the purpose of being delivered to the authorities of the United States. All of which was done or caused to be done by your petitioner because of the promise of the United States set forth in the aforesaid proclamation.

Your petitioner also showeth that in the month and year last aforesaid, to wit, in the month of December, 1866, the said John H. Suratt, for the greater convenience of the United States authorities, was ordered to be removed from the said town of Veroli to the city of Rome aforesaid, and that while the said John H. Suratt was being taken from the said guard-house at Veroli aforesaid preparetory to his being sent to Rome

6 aforesaid, for the purpose aforesaid, the said John H. Suratt, by leaping from a stairway or parapet erected on the outer wall of said guard-house, succeeded in escaping from the soldiers who were guarding him, and, with the aid and assistance of his friends, succeeded in escaping from the said town of Veroli and across the Italian frontier. And your petitioner being, at the time of the last said escape of the said John H. Suratt, a soldier in the army of the Pope of Rome, as aforesaid, could not follow the said John H. Suratt across the Italian frontier and recapture him.

Yet, notwithstanding your petitioner could not and did not immediately pursue and recapture the said John H. Suratt after his escape from

Veroli aforesaid, still your petitioner avers that he caused the final capture and arrest of the said John H. Suratt, which final capture and arrest lead to and resulted in the delivering of the said John H. Suratt to the United States authorities.

VIII. Your petitioner further showeth, that immediately after the said escape from Veroli aforesaid of the said John H. Suratt, your petitioner without any delay notified said Hon. Rufus King, at Rome aforesaid, of the said escape, and he also at the same time informed said Hon. Rufus King that the said John H. Suratt was at Naples, and that if prompt means were adopted the said John H. Suratt could be arrested and secured at said Naples, and that the said Hon. Rufus King, acting on the said information given him by your petitioner, took measures for the arrest at Naples aforesaid of the said John H. Suratt, when it was discovered that a man answering the description of said John H. Suratt, though not passing under the last said name, had taken passage at said Naples on a steamship bound for Alexandria, in Egypt, via the island of Malta, whereupon the said Hon. Rufus King communicated with the United States consuls both at the island of Malta and at Alexandria aforesaid, and instructed the said consuls to have the said man supposed to be John H. Suratt arrested on the arrival at either of said ports of the said steamship from Naples aforesaid.

7 And your petitioner has since been informed and he now believes that, on the arrival of the said steamship at the said island of Malta, the United States consul at said island endeavoured to have the man supposed to be John H. Suratt on board of the said steamship arrested and taken into custody, but that the British authorities at said island would not suffer or allow the said man alleged to be John H. Surratt to be arrested or taken into custody at the last said place.

IX. Your petitioner further showeth that, on the arrival of the said steamship at Alexandria aforesaid, the said man supposed to be John H. Suratt, on board of said steamship from Naples aforesaid, was arrested and put in custody, at the request of Charles Hale, esq., United States consul at said Alexandria, and your petitioner avers that the said man arrested and put in custody at Alexandria as last aforesaid was John H. Suratt, one of the alleged murderers of Abraham Lincoln, late President of the United States, and one of the alleged conspirators to assassinate the Hon. William H. Seward, late Secretary of State, and he also avers that the said John H. Suratt was arrested at Alexandria last aforesaid because of the work and labor of your petitioner both before and after the escape from Veroli and the kingdom of Italy aforesaid of the said John H. Suratt, and especially because of the information given to said Hon. Rufus King by him after the said escape from said Veroli of said John H. Suratt.

X. Your petitioner further showeth that, two days after the said escape from said Veroli of the said John H. Suratt, to wit, in December, A. D. 1866, as aforesaid, your petitioner obtained a furlough or leave of absence from his regiment. That he then went to Rome aforesaid to see Hon. Rufus King, and to consult with him about the recapture of said John H. Suratt; that soon after his arrival in said city of Rome, at the time last aforesaid, the said Hon. Rufus King requested his discharge from the said army of the Pope of Rome, and your petitioner was discharged from the said army. That on his said discharge from the said army he was sent to Cinta Vichi by said Hon. Rufus

8 King, to meet with and go on board of the United States war-ship Swartara, which said war-ship Swartara was to take your petitioner to Alexandria, aforesaid, so that your petitioner should identify

the said John H. Suratt, said to be in arrest at said Alexandria, as aforesaid. That your petitioner went to Cinta Vichi; that he went on board of the said United States war-ship Swartara; that the said ship Swartara took your petitioner to said Alexandria; that your petitioner identified the said John H. Suratt at said Alexandria; that the said John H. Suratt, after being identified by your petitioner, was taken on board of the said United States war-ship Swartara, as was also your petitioner; that the said war-ship, with your petitioner and the said John H. Suratt on board of her, started for the United States. That your petitioner was treated with so much disrespect and contumely by the officers and crew of the said United States war-ship Swartara, and especially by Captain Jeffers, United States Navy, commanding the said ship Swartara; and the said John H. Suratt was treated with such marked courtesy and distinction by the said Captain Jeffers, that the position on board of the said United States war-ship Swartara was unbearable to your petitioner. That, in consequence of said disrespect and unbearable insults offered by the said Captain Jeffers to your petitioner, when the said war-ship Swartara arrived at Nice, in Italy, aforesaid, on the way back from Egypt, aforesaid, your petitioner asked to be put ashore at said Nice, and your petitioner was put on shore at said Nice, where your petitioner remained about two weeks; your petitioner, after remaining at said Nice for about two weeks, as aforesaid, started for Paris, in France, aforesaid, and reported at said Paris to the Hon. John Dix, United States minister at the court of France. And the said Hon. John Dix, on hearing your petitioner's account of his discovery and arrest of said John H. Suratt, sent your petitioner to the United States as a witness against the said John H. Suratt, and your petitioner appeared as a witness at the trial of the said John H. Suratt, at Washington, D. C., in the United States of America.

9 XI. And your petitioner further showeth that notwithstanding several letters and communications were received by your petitioner from said Hon. Rufus King at and about the time of the said discovery of the said John H. Suratt by your petitioner, on the subject of the discovery of the said John H. Suratt, yet your petitioner avers that none of the said communications and letters of said Hon. Rufus King ever informed your petitioner that it was alleged that the offer of the said reward of twenty-five thousand dollars for the arrest of the said John H. Suratt had been revoked, nor did your petitioner know nor was he informed, by any means whatsoever, that it was pretended or alleged that the said proclamation had been revoked, until your petitioner arrived in Washington, D. C., in the United States, in the month of January, A. D. 1867, and about the time of the arrival at said Washington, D. C., in the United States aforesaid, of the said John H. Suratt, whom your petitioner had caused to be arrested and brought within the limits of the United States agre'able to the proclamation of the United States, as hereinbefore set forth.

XII. And your petitioner further showeth, that it is illegally and unjustly stated that your petitioner is not entitled to the aforesaid reward because of the issuing of the general order in the words and figures following, to wit:

"ADJUTANT-GENERAL'S OFFICE,
Washington, November 24th, 1865.

["General Orders No. 164.]

"2. The rewards offered for the arrest of Jacob Thompson, Beverly Tucker, George N. Saunders, William Cleary, and John H. Surratt, are revoked.

"By order of the President of the United States.

"E. D. TOWNSEND,
"*Assistant Adjutant-General.*"

Of which said order your petitioner had no notice, knowledge, or information until long after he had caused and procured the arrest of said John H. Suratt as aforesaid.

XIII. And your petitioner avers that before the date of said general order your petitioner had been put to great expense in pursuing the said John H. Suratt, for the purpose of arresting him and delivering him to the authorities of the United States, and your petitioner also avers that he ran a great many risks of his life both on sea and land before the date of said General Order No. 164, in pursuit of the said John H. Suratt, for the purpose aforesaid, and your petitioner avers that except for the issuing of the aforesaid proclamation your petitioner would not have expended his time and his money in pursuit of the said John H. Suratt, nor would he have run or incurred the danger to his life, limbs, and health that he encountered in pursuit of the said John H. Suratt, and especially that he would not have enlisted for a term of two years in the army of the Pope of Rome as aforesaid.

Your petitioner further avers that because of his having discovered the said John H. Suratt, and because of your petitioner being the cause of the arrest and trial of the said John H. Suratt, he has been subject to the bitterest persecution by a large class of his countrymen in Canada, and that because of his actions in connection with the capture and trial of the said Suratt, his business and his business prospects have been entirely destroyed; and he avers that amongst a large class of people in the United States, where he has more than once attempted to make his home and residence, not only have his business prospects been blighted because of his actions in relation to the arrest and trial of the said John H. Suratt, but that his very life is in continual jeopardy because of his causing the arrest and trial of the said John H. Suratt.

Your petitioner further avers that notwithstanding the issuing of General Order No. 164, hereinbefore mentioned and set forth, your petitioner is entitled to the whole of the said reward of twenty-five thousand dollars, ($25,000.00,) except the sum of ten thousand dollars ($10,000.00) which has been paid to him, on the ground—

1. That he caused the said John H. Suratt to be arrested and brought within the limits of the United States for trial agre'able to the terms of the said proclamation.

11 2. That the said proclamation did not limit him to any particular time within which to produce the person of the said John H. Suratt to the authorities of the United States.

3. That the said proclamation was a special contract and could not be revoked by a general order of the War Department, such as General Order No. 164, hereinbefore set forth.

4. That the said proclamation implied a contract and also implied that

it would continue in full force until the arrest and giving up to the authorities of the United States of the said John H. Suratt.

5. That the United States, through her legislative department, have recognized and admitted that your petitioner rendered the services in causing the arrest of the said John H. Suratt, which entitled him to the compensation, and the United States paid your petitioner on account, as part of his said claim, ten thousand dollars, ($10,000,) (U. S. Stat. at Large, vol. 15, page 234, 433,) leaving due and unpaid fifteen thousand dollars, ($15,000,) wherefore your petitioner demands judgment against the United States for fifteen thousand dollars, balance due him.

HENRY B. STE MARIE,
By D. B. MEANY,
His Attorney.

F. C. BREWSTER, *of Counsel, Philadelphia, Penn.*
D. B. MEANY, " " "
V. B. EDWARDS, *Washington, D. C.*

STATE OF PENNSYLVANIA,
City and County of Philadelphia, ss:

Before me personally appeared Daniel B. Meany, attorney for Henry B. Ste. Marie, and made oath, according to law, that no assign-
12 ment or transfer of the foregoing claim in the foregoing petition mentioned, or any part thereof, or any interest therein, has been made; that the petitioner, Henry B. Ste Marie, is justly entitled to the amount therein claimed from the United States after allowing all just credits and offsets, and that affiant believes the facts as stated in said petition to be true.

DANIEL B. MEANY.

Subscribed and sworn before me this fifth day of December, A. D. 1872.

CHARLES H. T. COLLIS,
Commissioner for the Court of Claims at Philadelphia, Penna.

13 In the United States Court of Claims, December term, A. D., 1872.

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And the said defendants, by their Attorney-General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of fifteen thousand dollars, the said defendants say that they are not indebted to the said claimant in the said sum of money, nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

JOHN GOFORTH,
Assistant Attorney-General.

Filed July 3, 1873.

14 In the Court of Claims.

HENRY B. STE. MARIE
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At a Court of Claims, held at the Capitol, in the city of Washington, the fifteenth day of May, A. D. 1874, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the defendants, and do order, adjudge, and decree that the said petition be dismissed by the court.

15 United States Court of Claims.

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To the honorable judges of the Court of Claims of the United States comes the claimant, by his attorney, and prays an appeal to the Supreme Court of the United States in said cause.

VEDANTUS B. EDWARDS.
Atty. for Claimant.

Filed June 9, 1874.

AT CHAMBERS.

Allowed.

C. D. DRAKE, *C. J.*

16 United States Court of Claims.

HENRY B. STE. MARIE
vs.
THE UNITED STATES. }

Findings of fact.

I. On the 20th April, 1865, the Secretary of War issued, and caused to be published in the public newspapers and otherwise, a proclamation, whereby he announced that there would be paid by the War Department, "for the apprehension of John H. Surratt, one of Booth's accomplices," $25,000 reward; and also that "liberal rewards will be paid for any information that shall conduce to the arrest of either of the abovenamed criminals or their accomplices," and such proclamation was not limited in terms to any specific period, and it was signed Edwin M. Stanton, Secretary of War. On the 24th November, 1865, the President caused to be published his order revoking the reward offered for the arrest of John H. Surratt. (13 Stat. at L., p. 778.)

II. In April, 1866, John H. Surratt was a zouave, in the military service of the Papal government, and the claimant was also a zouave in the same service. During that month he communicated to Mr. King, the American minister at Rome, the fact that he had discovered and identified Surratt, who had confessed to him his participation in the plot against the life of President Lincoln. The claimant also subsequently communicated further information to the same effect, and kept watch, at the request of the American minister, over Surratt. There-

upon certain diplomatic correspondence passed between the Government of the United States and the Papal government relative to the arrest and extradition of Surratt, and on the 6th November, 1866, the Papal government, at the request of the United States, ordered the arrest of Surratt, and that he be brought to Rome, he then being at Veroli. Under this order of the Papal government Surratt was arrested, but at the moment of leaving prison at Veroli he escaped from the guard having him in custody, and, crossing the frontier of the Papal territory, embarked at Naples and escaped to Alexandria, in Egypt. Immediately after his escape, and both before and after his embarkation at Naples, the American minister at Rome, being informed of the escape by the Papal government, took measures to trace and re-arrest him, which was done in Alexandria. From that place he was subsequently conveyed by the American Government to the United States, but the American minister, having previously procured the discharge of the claimant from the Papal military service, sent him forward to Alexandria to identify Surratt. At the time of the first interview between the claimant and the American minister, and at all subsequent times until the final capture of Surratt, they were ignorant of the fact that the reward offered by the Secretary of War for his arrest had been revoked by the President. The discovery and arrest of Surratt was due entirely to
17 the disclosures made by the claimant to the American minister at Rome, but the arrest was not made by the claimant either at Veroli or subsequently at Alexandria.

III. There has been paid to the claimant by the defendants, under the act of 27th July, 1868, (15 Stat. at L., p. 234, § 3,) the sum of $10,000. Such payment was made by a draft on the Treasury payable to the order of the claimant, which draft was by him duly indorsed:

And the Court of Claims, upon the foregoing facts, decides, as—

Conclusion of law.

The claimant's service as set forth in the foregoing findings, did not constitute an arrest of Surratt within the meaning of the proclamation, but was merely the giving of information which conduced to the arrest. For such information the remuneration allowed to him under the act of Congress was a full satisfaction, and discharges the defendants from all liability.

NOTT, J., delivered the opinion of the court:

The learned counsel who presented this case for the claimant, after analyzing it with great ability, rested it upon three legal propositions, as to which he frankly admitted that if any one of them could not be maintained the suit must fail. These propositions were:

1. That when the Secretary of War offered a reward for the arrest of Surratt, he spoke for the President, at a time when martial-law existed in Washington, and when it was proper for the Executive to take extraordinary measures to secure the arrest of the assassins.

2. That the claimant acted upon the offer, and accomplished the purpose of the proclamation by procuring the arrest of Surratt.

3. That the Government had not power to revoke the offer after the other party had proceeded to act upon the faith of it.

It is, we think, upon the second proposition that the case upon the facts must fail. The proclamation made two offers: the one, looking to the arrest of Surratt and his actual capture and delivery to the Govern-

ment; the other, looking to valuable information which would lead to his arrest. The claimant's service came within the second offer. He did not arrest and deliver Surratt, either by himself or through the officers of the Papal government, but he gave to the American minister information which led to the final arrest in Alexandria, by which the Government for the first time actually acquired possession of Surratt. This service was valuable, and for it he has been compensated by Congress.

The judgment of the court is that the petition be dismissed.

18 In the United States Court of Claims.

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And now comes the Attorney-General, on behalf of the United States, and requests the court to find the following facts:

I. On the 20th April, 1865, the Secretary of War published, by means of hand-bills, a proclamation, whereby he announced that there would be paid by the War Department, "for the apprehension of John H. Surratt, one of Booth's accomplices, $25,000.00 reward; and also that "liberal rewards will be paid for any information that shall conduce to the arrest of either of the above criminals or their accomplices."

II. November 24th, 1865, this offer was withdrawn by order of the President. (General Order No. 164, 13th Statutes at Large, p. 778.)

III. In April, 1866, John H. Surratt was a zouave in the military service of the Papal government, and the claimant was also a zouave in the same service.

19 IV. During that month the claimant communicated to Mr. King, American minister at Rome, the fact that he had discovered and identified Surratt, who had confessed to him his participation in the plot against the life of President Lincoln; and he also subsequently communicated further information to the same effect, and kept watch, at the request of the American minister, over Surratt.

V. All the compensation he desired for these services was reasonable allowance for his expenses, his discharge from the Papal Zouaves, of which he was heartily sick, and a free passage home to America.

VI. Subsequent to this information, certain diplomatic correspondence passed between the Government relative to the arrest and extradition of Surratt. There was no extradition treaty between the Governments, but the Papal authorities promised to arrest Surratt when they should be formally requested to do so.

20 VII. Before any such request was made, the Papal authorities, of their own motion, on the 7th November, 1866, ordered that Surratt should be brought from Veroli to Rome.

VIII. Under this order Surratt was arrested, but at the moment of leaving prison at Veroli he escaped from the guard having him in custody, and, crossing the frontier of the Papal territory, embarked at Naples, and escaped to Alexandria, in Egypt.

IX. The Papal government informed Mr. King of this escape, who both before and after this embarkation at Naples, took measures to trace and re-arrest him. By the united efforts of Mr. King and Mr. Hall, consul-general at Alexandria, Surratt was arrested at that place.

X. This was the first time Surratt was in the custody of the United States authorities, under the charge for which he was afterward tried.

From Alexandria, Surratt was conveyed by the American Gov-
21 ernment to the United States, but Ste. Marie had previously been taken there to identify him.

XI. The information given by Ste. Marie to Mr. King led to Surratt's ultimate arrest; but other than the identification at Alexandria he had no connection with it.

XII. It does not appear that claimant knew of the offers of reward when he gave the information, nor that he performed the services with a view to claiming the same; nor does it appear that either he or Mr. King knew of the revocation of the order.

XIII. Claimant received from Mr. King, without protest, $250.$\frac{00}{100}$ in gold, in consideration of the information and services. Mr. King also procured his discharge from the Papal government, and his passage to America free.

XIV. There has been paid to the claimant by the defendants, under the act 27th July, 1868, (15th Statutes at Large, p. 234, section 3,)
22 the sum of $10,000.$\frac{00}{100}$. Such payment was made by a draft on the Treasury, payable to the order of the claimant, which draft was by him duly endorsed.

JOHN GOFORTH,
Assistant Attorney-General.

Upon these proposed findings the court made the following order, to wit:

All of the foregoing findings requested by the defendants are refused as irrelevant and immaterial, except so far as they are incorporated in the findings of the court.

By the court.

23 In the Court of Claims.

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vs.
THE UNITED STATES. } No. 6415.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the attorney for the claimant for the allowance of an appeal, as filed in the clerk's office June 9, 1874, and of the order of the chief-justice of said Court of Claims allowing the same; of the findings of fact by the court, and the conclusion of law thereon on which it founded its judgment; of the opinion of the court; and of the request for additional findings by the defendants, with the order of the court thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 14th day of August, A. D. 1874.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover;) No. 223. William Shuey, executor of Henry B. Ste. Marie, deceased, appellant, vs. The United States. Court of Claims. Filed 14th August, 1874.

In the Supreme Court of the United States.

October Term, 1874. No. 223.

WILLIAM SHUEY, Executor of the Last Will and Testament of HENRY B. STE. MARIE, Deceased, Appellant,

v.

THE UNITED STATES, Appellee.

APPEAL FROM THE COURT OF CLAIMS OF THE UNITED STATES.

Brief and Argument of Appellant.

Statement of the case (also set forth in the record, pages 8 and 9).

This was a claim presented by Henry B. Ste. Marie, in the Court of Claims, for the recovery of $15,000, the balance due to him for the discovery and apprehension of John H. Surratt (one of Booth's alleged accomplices in the assassination of President Lincoln), under a proclamation dated April 20th, 1865, issued and published by Edwin M. Stanton, Secretary of War of the United States, offering a reward of $25,000 for the apprehension of said John H. Surratt.

The appellant established his claim:

1st. By the diplomatic correspondence on the subject of D. B. M.—

said Surratt's apprehension, carried on between the Secretary of State, Mr. Seward, and Mr. Rufus King, United States Minister at Rome, at the time of the discovery and apprehension of said Surratt, in the Kingdom of Italy.

2d. By the testimony of Hon. Rufus King, United States Minister at Rome (taken in New York city).

3d. By no denial by the appellee of any of the facts contained in the petition and testimony of appellant (not ruled out as irrelevant by the Court of Claims.

4th. By a full acknowledgment of the facts contained in the petition and testimony of the appellant in the Court of Claims, as per the finding of facts in said court (page 9 of appeal), which says: "The discovery and arrest of Surrat was due entirely to the disclosures made by the claimant to the American Minister at Rome."

The defence was that the proclamation offering the reward aforesaid was revoked by order of the President of the United States; and, also, that the appellant did not apprehend Surratt within the meaning of said proclamation, to entitle him to the full amount of said reward, and that the $10,000 paid to claimant by act of Congress, was a full discharge of the defendant from all liabilities.

The Court of Claims decided in its "conclusion of law," "That the claimant's services did not constitute an arrest of Surratt, within the meaning of the proclamation, but was merely the giving of information which conduced to the arrest, and for such information the remuneration allowed him ($10,000) under the act of Congress, was a full satisfaction, and discharges the defendant from all liability."

Assignment of Errors.

The appellant here contends that the honorable court below

1st. Erred upon the facts stated, in rendering judgment in favor of the defendant.

2d. Upon the facts stated, in not rendering judgment in favor of the claimant.

3d. In its conclusions of law upon the facts stated.

4th. In deciding that claimant gave only such information as entitled him to a liberal reward under the said proclamation.

5th. In deciding by implication, that under the proclamation it was the duty of the claimant to manually take Surratt to entitle claimant to said reward.

6th. In deciding that claimant did not apprehend Surratt within the meaning of the proclamation.

7th. In deciding that the case failed upon the facts stated in the second proposition of the counsel who presented the case.

8th. In deciding that the payment of $10,000 to claimant was a full satisfaction, and discharged the defendant from all liability.

Argument on the Law.

The proclamation issued by the Secretary of War was properly issued, he was acting for the President, the President for the Government. Governments must act through their officers (Story on Agency, 6th edit., Chap. XI. Sec. 302; Kent, Comm. Lect. 41, p. 633, 4th edit.) Even if improperly issued, the principal was bound by it, for though published and made known to the people, the principal did not contradict or deny the right of the officer to make such proclamation, therefore, the principal was bound by it. The proclamation was a special contract, made upon the credit and responsibility of the Government, offering the fixed sum of $25,000 for the apprehension of John H. Surratt. "Government, far beyond that of any private man, is ready to fulfil" all just contracts not only with good faith, but with punctilious promptitude, and in a spirit of liberal courtesy. (Story on Agency, Chap. XI. Sec. 302, 6th edit.) Under the contract, the claimant apprehended Surratt and caused Surratt to be taken into custody by the United States Government. At the time of the publication of the said proclamation there was but one ingredient of the contract missing, to wit, the assent of the claimant; but by the rule of law that we judge of the motive by the act, so do we by the same rule arrive at the assent of a party to a contract by his acts in connection therewith. Benjamin on Sales; Chitty on Con.; Smith on Con. Applying this rule to unravel the unusual conditions of the contract in this case, where does it lead to? That the claimant did assent from the beginning, for he apprehended Surratt. The claimant, if he did assent, had a vested interest in the contract which could not be divested by any subsequent act of the appellee such as the revoca-

tion of the reward, or any legislation on the subject such as part payment. Besides this, it was the duty of the appellee to inform the appellant at the time of his discovery of Surratt in Italy, that the reward was revoked.

The Court of Claims in its conclusions of law and in its opinion (pages 9 and 10 of the appeal), very properly ignores the revocation, and says that "the proclamation "made two offers, the one looking to the arrest of Surratt "and his actual capture and delivery to the Government; "the other, looking to valuable information which would "lead to his arrest. The claimant's service came within the "second offer. This service was valuable, and for it he "has been compensated by Congress." According to the foregoing, the claimant took under the proclamation offering the reward, and was not effected by the revocation of the same, the next question then would naturally be, are there two offers in the proclamation? and if so, under which of the two offers did the appellant deserve to be rewarded for his services, to wit, his discovery and apprehension of said Surratt in the manner established even by the finding of the Court of Claims. The words of the proclamation are as follows, viz.: "$25,000 reward will be paid for the apprehension of John H. Surratt, one of Booth's accomplices; liberal rewards will be paid for *any information* that shall conduce to the arrest of either of the above named criminals, or their accomplices." Can it be said or maintained, that the services and acts of the appellant came under the very vague and general term "*any information*" mentioned in said proclamation, when the Court of Claims in its finding of facts (page 9 of record) says, that "the discovery and arrest of Surratt was due *entirely* to the disclosures made by the claimant to the American Minister at Rome."

Did not the appellant apprehend Surratt in the very letter and spirit of the proclamation? What more could

the appellant have done had he discovered Surratt in the United States, than to go to some public officer and say to him, I have found Surratt, I will take you where he is, and you can take him into custody for the Government. That is exactly what the appellant did in Italy. He found Surratt (after a long search). Then the appellant went immediately to a public officer (Mr. King) and told him of the discovery and the place where Surratt could be taken. Surratt was at the place mentioned. If the American Minister had not the political power to then arrest Surratt, surely it was not the fault of the appellant, but rather the fault of the appellee for not having an extradition treaty with Italy, for such purposes. Surely the proclamation did not mean that it was necessary the appellant should take Surratt with his, the appellant's own hands, to entitle him to the full reward. Yet that seems to be the effect of the decision of the Court of Claims. According to this reasoning, a smaller man than Surratt (physically) never could claim the reward, because he would be unable to hold on to Surratt.

If "the discovery and arrest of Surratt were due *entirely* to the disclosures made to the American Minister at Rome by the claimant" (as it is so found by the Court of Claims, page 9 of appeal), it is hard to discover by what rule of law or logic the court below decided that claimant was entitled only to the "liberal reward" mentioned in the proclamation, which said "liberal reward" was offered "to any person giving *any information* that would *conduce* to the arrest of Surratt." Can it be said that discovery and pointing out Surratt to the defendant by the claimant was only "*information that conduced to the arrest of Surratt.*" Was not such discovery of, and pointing out of Surratt, the apprehension meant in the proclamation? Did not the claimant do all that it was possible for him or any private man to do, under the circumstances of the case? Having

discovered Surratt in Italy, the claimant at once informed the American Minister of his discovery and pointed out Surratt to him. It is contended, however, that inasmuch as the claimant did not himself manually take Surratt into custody, nor cause the Papal Government to arrest him directly, but that it was at the request of the American Government and not at the claimant's request, that the Papal Government arrested Surratt, the claimant is therefore barred from claiming the whole of the reward. But the arrest was regarded as a compliment by the Papal Government toward the United States (there then being no extradition treaty between said governments.) (Letter from Mr. Seward to Mr. King, page 25 of record.) How then could it be expected that the claimant could get the Papal Government to arrest Surratt for him? Might it not with more propriety be contended by the claimant that having discovered and pointed out Surratt to the defendant, that the defendant took Surratt into custody by its agents (the Papal Government), and that after Surratt was in custody of defendant, he, Surratt escaped, and that even had Surratt never again been recaptured, the claimant was entitled to the reward, for the claimant is not responsible for the carelessness of the defendant's agent in allowing Surratt to escape. If the claimant had discovered Surratt in the city of Washington, what more could he have done than to procure Surratt's arrest and detention by the constituted authorities; the claimant accomplished this in Italy. If Surratt had been discovered by claimant in the city of Washington, and the claimant caused Surratt to be taken into custody by the constituted authorities there, and Surratt effected his escape from such authorities at Washington, would it be said in such case that the claimant was to lose the reward because of the carelessness of the authorities at Washington in allowing Surratt to escape? It is a parallel case, now, whether Surratt escapes from the au-

thorities in Washington or in Italy. If he was recaptured (especially if his recapture or second arrest, whether made in Egypt or elsewhere, was owing to his first discovery by the claimant, which it is admitted was the case), for "the discovery and *arrest* of Surratt was *due entirely* to the disclosures made by the claimant, &c.;" but more especially if such recapture or rearrest of Surratt was made by a public officer (as was the case) whose duty it was to take Surratt as an escaped criminal, and who as such public officer had no right to expect the reward for doing his duty, then the claimant was and is entitled to the whole of said reward, and any payment of the claimant less than the whole sum named in the contract was not and is not a discharge or satisfaction of said contract, but was and is only part payment on account of said contract, unless such part payment was specially agreed to by the claimant and defendant.

Authorities Cited.

163, 1778.
14 Pet. 448.
15 Pet. 337.
18 How. 92.
2 Curtis, 617.
1 Howard, 290.
7 Wallace, 666 (1868).
1 Nott. & H. 292.
4 Sergeant & Rawle, 241.
14 Sergeant & Rawle, 267.
4 Watts, 317.
7 Casey, 263.
4 Barr, 353.
3 P. F. Smith, 207.
15 P. F. Smith, 269.
2 P. F. Smith, 484.

Brewster, Meary & Edwards
Attys for appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

WILLIAM SHUEY, EXECUTOR OF HENRY B. STE. MARIE, APPELLANT,
vs.
THE UNITED STATES.
No. 223.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

WILLIAM SHUEY, EXECUTOR OF HENRY B. Ste. Marie, appellant,
vs.
THE UNITED STATES.
No. 223.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

STATEMENT OF THE CASE.

The claimant's testator filed this petition to obtain an alleged balance of $15,000, parcel of a reward of $25,000 offered April 20, 1865, by the War Department for the apprehension of John H. Surratt, charged with being accessory to the murder of President Lincoln. That offer was promulgated, on the day above stated, by the Secretary of War through a printed hand-bill, declaring that "$50,000 reward will be paid *by this Department*" for the apprehension of Booth; "$25,000 reward will be paid *for the apprehension* of John H. Surratt, one of Booth's accomplices;" a like sum for that of David C. Harold; and then saying, "*Liberal rewards will be paid for any information that shall conduce to the arrest of either of the above-named criminals, or their accomplices.*" Aside from these printed bills, no record from the War

Department of any such offer appears, though it will be noticed that it professes only to be the act of that Department, and not of the Chief Executive. Upon the 2d day of May, 1865, President Johnson did offer large rewards for the arrest of six persons, specially mentioned as connected with "the atrocious murder of the late President, Abraham Lincoln;" but John H. Surratt's name was not one of those given in that proclamation, (13 Stats., 756,) but is found (upon page 778 of the same volume) in an Executive order of November 24, 1865, declaring that "the rewards offered for the arrest of Jacob Thompson, Beverly Tucker, George N. Sanders, William G. Cleary, and *John H. Surratt are revoked.*"

The petition alleges that Ste. Marie set about the discovery and apprehension of Surratt immediately after the offer of reward, but this is not found as a fact by the Court of Claims, (Record 8, 9,) the identification of Surratt having evidently been considered as accidental by that court, happening from both men being enlisted in the Papal zouaves. At all events it is apparent that Ste. Marie had no definite information of Surratt's whereabouts till the spring of 1866, when he at once communicated it to Mr. King, our minister at the Pontifical Court, and this information was at once acted upon, the man confined, recaptured at Alexandria, Egypt, and delivered to our consul there November 27, 1866.

The claimant applied to Congress for compensation; not for this specific reward. Joint resolution No. 65, (15 Stats., 433,) passed July 20, 1868, directed the Secretary of State to pay Ste. Marie $10,000 out of the civil-service fund; but, a week later, this resolve was repealed and a section added to an appropriation bill directing

the Secretary of the Treasury to pay him that sum. (Act of July 27, 1868, c. 263, § 3, 15 Stats., 234.) Both resolve and statute expressed the payment to be "for services and information in the arrest of John H. Surratt."

This sum was paid him August 1, 1868, upon a Treasury warrant, couched in the same language.

BRIEF.

I.

The original offer was unauthorized. It does not even purport to have been made by the President, or his authority; only that "the War Department will pay." To cause the arrest of supposed criminals and bring them before the judicial tribunals for trial, is not the special province of that Department. The United States were never *legally* bound by that offer, because it was not within the scope of Mr. Stanton's official authority to make it, and they are held only to the extent they have actually given power to him who professes to be acting as their agent. (Lee *v.* Munroe, 7 Cranch, 366; Hunter *v.* United States, 5 Peters, 188; Johnson *v.* United States, 5 Mason, 425; United States *v.* City Bank, 6 M'Lean, 130; 9 Atty. Gen. Op., 18.)

Although the President might, perhaps, offer such reward, yet the War Department could only make a contract in writing, "signed by the contracting parties." (Act of June 2, 1862, c. 93, 12 Stats., 411.)

II.

If authorized, the offer of a reward, general or special, is a promise conditional upon the rendition of the pro-

posed service *before the offer is revoked.* Such an offer is revocable at any time before performance; and it is only by performance that it becomes a binding contract.

(Freeman *v.* Boston, 5 Metc., 57; Loring *v.* Boston, 7 Metc., 409; Cummings *v.* Gann, 52 Penn. St., 590; Ryer *v.* Stockwell, 14 Cal., 137; Gilmore *v.* Lewis, 12 Ohio, 285; Crocker *v.* N. L. R. R. Co., 24 Conn., 261; Janorin *v.* Exeter, 48 N. H., 83; Jones *v.* Phenix B'k, 4 Seld., 228; Fitch *v.* Snedaker, 38 N. Y., 248.)

This offer was revoked November 24, 1865. Ste. Marie had rendered no service to the United States; he, at least, *had performed no condition* of that promise, before that date. The revocation was as public, and certainly as authentic, as the original promulgation of the proclamation. Suppose he had incurred expense in traveling to seek information, he had obtained none, and could communicate nothing to the purpose, till the spring of 1866. If his bare *efforts*, availing nothing or successful, as the event might prove, gave him any claim, then all others who traveled anywhere, made any exertion, or incurred any expense to track Surratt, Thompson, Tucker, or Saunders prior to November 24, 1865, have an equal right; if *success* is essential to the validity of the claim (as it doubtless is)—*exitus probat rei*—that was not attained till after the revocation.

III.

According to the terms of the original offer, Mr. Ste. Marie never did that which would have entitled him to $25,000, or anything more than a "liberal reward," had there been no revocation. The terms of such an offer are rightly prescribed by the person offering it, and must be strictly complied with by him who claims the reward.

(Jones *v.* Phenix Bank, 4 Seld., 228; Fitch *v.* Snedaker, 38 N. Y., 248; Clinton *v.* Young, 11 Rich., (So. Car.,) 546.)

The proclamation of Secretary Stanton contained two propositions, to wit, (1) that "$25,000 will be paid *for the apprehension* of John H. Surratt;" and (2) that "liberal reward will be paid for *information* that shall *conduce to the arrest.*" That he found Surratt in a country and situation which precluded the possibility of his arrest by the claimant, is not sufficient to entitle him to the full reward offered for making the arrest. That he *couldn't* do it is no reason why he should be paid for doing it. Impossibility of performance is not the equivalent of performance, in such a case, by any means. What he *could* do was to give "information that shall conduce to the arrest." This he did, and has received his "liberal reward" for that service.

His counsel ask, "What more could the appellant have done had he discovered Surratt within the United States," than to give information of the fact to some public officer and conduct him to the place where the culprit could be found? The answer is, that it would have been his *legal right* to have forcibly taken Surratt and carried him to the officer and committed him into custody. "Any private individual may arrest a felon." (2 Bouv. Inst., 498, § 2221; 1 Bouv. L. D., 122; Wharton's Law Lex., 85; *Termes de le Ley*, 52; 1 Bishop Criminal Procedure, §§ 625–'6.) He not only *may* do it, but it is his *duty* to do it. To stimulate activity in the discharge of that duty, rewards are offered. The authorities are also unanimous that, if the felony has certainly been committed, a private person may arrest one whom he has reasonable cause to suspect of its commission.

(1 Bish. on Cr. Proc., § 625; 2 Bouv. Inst., § 2220.) If (as claimant's counsel suggests) the captor were so much weaker as to be unable to physically restrain Surratt, that would excuse him for non-performance of the *duty* of arrest, but would no more entitle him to a reward for not doing what he had not strength to do than it would if his failure to capture the accused were through ignorance of his whereabouts, though unavailing efforts were made to ascertain it. It is for what he could and *did* do that the man is to be compensated, not for what he did *not* do because he could not, whatever may be the cause of inability, whether ignorance, weakness, or other circumstances.

There was full scope for the performance of the first alternative of Mr. Stanton's proclamation; the speedy arrest of Surratt here, and his surrender for trial. This was the most desirable, in order that punishment might follow the crime with the least interval of time consistent with a due administration of justice. Therefore the largest reward is offered for that service, but nobody performs it. A "liberal" indefinite reward is tendered for information that may conduce to his arrest by by public officials. This information is furnished by the claimant, and he is liberally compensated therefor.

IV.

Though Ste. Marie, according to strict law, was entitled to nothing, Congress wished to deal equitably with him. He made his appeal to that body, not claiming $25,000, nor that he made the arrest, but only for furnishing the information which led to it. He received $10,250, his discharge from the papal service, and a free passage home. He has had his "liberal reward."

V.

His receipt of the $10,000 was in full of all equitable claim; legally he had none. (Marvin *v.* Treat, 37 Conn., 96. Sholes *v.* State, 2 Chand., (Wis.,) 182; Calkins *v.* State, 13 Wis., 389.

VI.

It is significant that counsel could find nothing more nearly approximating to this case than the instance of one erecting a dam upon land of another by license! Then an estoppel arises to prevent the loss of those expenditures made upon the faith of such license. (Huff *v.* McCauley, 53 Penn. St., 206.) Here nothing was accomplished before revocation. If the argument asserts anything, it is that an offer of a reward is irrevocable, and is everlasting in duration; whereas the authorities are to the effect that it expires unless complied with in a reasonable time. Here there is no evidence that Ste. Marie ever spent a penny, or an hour's time, to discover Surratt until they met in the papal army. The Court of Claims refuse to find any such expenditure of time or money. Therefore there is no propriety in making such an assumption the basis of an argument. *De non apparentibus et de non existentibus eadem est ratio.* United States *v.* Wilkinson, 12 Howard, 253.

EDWIN B. SMITH,
Assistant Attorney-General.